IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

Buddha Ram (deceased) through Badami & Others
Vs. Board of Revenue for Rajasthan Ajmer & Others
(SB Civil Writ Petition No.5596/1998)

SB Civil Writ Petition under Article
226 & 227 of the Constitution of India.

Date of order: October 10, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. V. K. Mishra, for the petitioners.

Mr. R.P.Kuldeep, Addl.Govt. Advocate for State.
Mr. R.S.Purohit, for respondents.

BY THE COURT:

Heard learned counsel for the parties.

2. The Revenue Appellate Authority (II) Jaipur vide judgment dated January 11, 1991 allowed the appeal preferred by Buddha Ram, Gurudayal Singh and Anant Ram and cancelled the allotment of land made on August 9, 1979 and remanded the matter to Sub Divisional Officer Kotputli. The operative part of the judgment reads as under:-

> "अत: अपीलान्टस द्वारा प्रस्तुत यह अपील स्वीकार की जाती है। रेस्पोन्डेन्टस एवं अपीलान्टस के पक्ष में दिनांक 9.8.79 को किये गये आवंटन निरस्त किये जाते हैं। यह प्रकरण वापिस उपखण्ड अधिकारी कोटपुतली को इस निर्देश के साथ पुन: प्रेषित किया जाता है कि उपलब्ध भूमि के लिए आवंटन नियमन की कार्यवाही आवंटन नियमों में वर्णित प्रावधानों की पालना करते हुए की जावे। पहले यह सुनिश्चित किया जावे कि उक्त विवरण की भूमि पर किसी व्यक्ति का अतिक्रमण नहीं रहे अर्थात अतिक्रमण को आवंटन से पूर्व हटाया जावे और अगर नियमन योग्य हो तो उसके लिये भी पहले निर्णय किया जावे।"

3. The respondents No.4 to 9 filed second appeal before the Board of Revenue (for short `Board'). The Board vide judgment dated July 16, 1998 allowed the appeal, set aside the judgment dated January 11, 1991 of the RAA and restored the allotment made on August 9, 1979. The representatives of deceased Buddha Ram along with Gurudayal Singh and Anant Ram have filed this writ petition challenging the judgment of the Board.

4. On August 9, 1979 the Allotment Committee of Gram Panchayat Gonera made allotment of khasra Nos.291, 292 and 293 measuring 20 bighas and 11 biswas to petitioners and respondents. Two bighas of land in each khasra was allotted to petitioners. Since notice as required under Rule 13(2) of Rajasthan Land Revenue (Allotment of land for agricultural purpose) Rules,1970 (for short `1970 Rules') was not issued, the petitioners challenged the order of allotment in appeal. The matter was heard and reheard by the RAA and ultimately vide judgment dated January 11, 1991 the RAA decided the appeal but the Board set aside the judgment of RAA as indicated above.

5. It is well settled that the second appeal has to be decided on the substantial question of law but the Board appears to have been swayed by the fact that the allottees were made to run again and again to the subordinate courts. If 1970 Rules were not properly appreciated by the SDO, the RAA was right in remanding the matter for fresh consideration. Rule 11(1) of 1970 Rules provides that the land shall be allotted to landless persons only. As per Rule 12 no allotment shall be made for the land which is less than 5 acres. Allotment has to be made by the SDO in consultation

with the Advisory Committee (vide Rule 13). Rule 13(4) provides that the allotment shall be made in the village where land proposed to be allotted is situated. These mandatory Rules were overlooked while making allotment on August 9, 1979 but the Board did not take into consideration this legal aspect and committed illegality in rendering the impugned judgment. I, therefore find it a fit case to invoke Article 227 of the Constitution.

6. For these reasons, I allow the writ petition and set aside the judgment dated July 16, 1998. While upholding the judgment of RAA (II) Jaipur, I direct the parties to appear before RAA (II) Jaipur on November 22, 2006 for seeking further instructions in the matter. There shall be no order as to costs.

(Shiv Kumar Sharma)J.

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